

### § 284.3

referred to collectively as the “non-DoD Components”).

(c) Certain functions for considering waiver applications that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense.

#### § 284.3 Definitions.

*Committee.* The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

*Component concerned.* The agency/activity (as well as the official designated by the Head of the agency/activity) required to perform the function or take the action indicated or that notifies the individual of the debt that is the subject of a waiver application.

*Debt.* An amount an individual owes the Government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

*Employee.* A person who is or was an officer or employee as defined in 5 U.S.C. 2104 and 2105.

*Erroneous payment.* A payment that is not in compliance with applicable laws or regulations.

*Final action.* A finding by the appropriate official under this part concerning a waiver application from which there is no right to appeal or request reconsideration, or for which the time limit prescribed in this part for submitting an appeal or request for reconsideration has expired without such a submission.

*Member.* A member or former member of the Uniformed Services.

*Waiver application.* A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

#### § 284.4 Policy.

It is DoD policy under 32 CFR part 283 that waiver applications for debts resulting from erroneous payments of pay and allowances (hereafter referred

### 32 CFR Ch. I (7–1–08 Edition)

to as “waiver applications”) be processed according to all pertinent statutes, regulations, and other relevant authorities.

#### § 284.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* (GC, DoD) or designee shall consult on, or render opinions concerning, questions of law or equity that arise in the course of the performance of the Director, Defense Office of Hearings and Appeals’ (DOHA) responsibilities under paragraph (b) of this section when requested by the Director.

(b) The *Director, Defense Office of Hearings and Appeals* or designee, under the GC, DoD (as the Director, Defense Legal Services Agency), shall:

(1) Deny or grant all or part of a waiver application, if the aggregate amount of the debt is more than \$1,500.

(2) Consider an appeal of an initial determination and affirm, modify, reverse, or remand the initial determination, according to this part and relevant GC, DoD opinions.

(3) Process waiver applications and appeals according to this part.

(c) The Heads of the DoD Components or designee shall process waiver applications according to this part.

(d) The *Heads of the Non-DoD Components* or designee concerning debts of Uniformed Services personnel resulting from the Component’s activity; the *Director, Department of Defense Education Activity* (DoDEA) or designee, concerning debts of civilian employees resulting from that Component’s activity; the *Director, National Security Agency* (NSA) or designee, concerning debts resulting from that Component’s activity; and the *Director, Defense Finance and Accounting Service* (DFAS) or designee, under the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), concerning debts resulting from all other DoD Components’ activities shall:

(1) Deny or grant all or part of a waiver application, if the aggregate amount of the debt is \$1,500 or less.

(2) If the aggregate amount of the debt is more than \$1,500:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that part or all of the application be granted, according to this part.

(3) Process waiver applications, when the aggregate amount of the debt is more than \$1,500, and appeals according to this part.

(4) Resolve a debt according to the final action that results from the waiver application process provided for in this part.

#### APPENDIX A TO PART 284—OVERVIEW OF WAIVER APPLICATION PROCESS

##### A. STANDARDS FOR WAIVER DETERMINATIONS

The standards that must be applied in determining whether all or part of a waiver application should be granted or denied are at Appendix B to this part.

##### B. SUBMITTING A WAIVER APPLICATION

The DoD Components shall ensure, if applicable, the submission and filing of waiver applications/appeals satisfy the requirements of 5 U.S.C. 552a. The procedures an applicant must follow to submit a waiver application are at Appendix C to this part.

##### C. PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS \$1,500 OR LESS

The procedures a DoD Component must follow in processing a waiver application when the debt is \$1,500 or less are at Appendix D to this part.<sup>1</sup>

##### D. PROCESSING A WAIVER APPLICATION WHEN THE DEBT IS MORE THAN \$1,500

The procedures a DoD Component must follow in processing a waiver application when the debt is more than \$1,500 are at Appendix E to this part.

##### E. APPEALS

The DoD Components shall ensure, if applicable, the submission and filing of waiver applications/appeals satisfy the requirements of 5 U.S.C. 552 and 552a. The procedures for appealing initial determinations are at Appendix F to this part.

##### F. REFUND OF REPAID DEBTS THAT ARE SUBSEQUENTLY WAIVED

When a final action waives all or part of a debt that has been repaid, the waiver application shall be interpreted as an application for a refund and the Component concerned

shall, to the extent of the waiver, refund the amount repaid.

##### G. PUBLICATION

The Director, DOHA or designee shall make redacted copies of responses to requests for reconsideration available for public inspection and copying at the DOHA's public reading room and on the worldwide web according to 5 U.S.C. 552 and 552a.

#### APPENDIX B TO PART 284—STANDARDS FOR WAIVER DETERMINATIONS

##### A. STANDARDS

1. Generally, persons who receive a payment erroneously from the Government acquire no right to the money. They are bound in equity and good conscience to make restitution. If a benefit is bestowed by mistake, no matter how careless the act of the Government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient received something for nothing. However, 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584 provide authority to waive, under certain conditions debts individuals owe the Government that are the result of erroneous payments of pay and allowances (including travel and transportation allowances). A waiver is not a matter of right. It is available to provide relief as a matter of equity, if the circumstances warrant.

2. Debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. There must be no indication the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

3. The fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not sufficient basis in and of itself for granting a waiver.

4. A waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

5. A waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

<sup>1</sup>Contact the appropriate non-DoD Component for the procedures it follows in processing a waiver application.